

Amendment No. 3 to SB2120

McNally
Signature of Sponsor

AMEND Senate Bill No. 2120*

House Bill No. 2186

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 31, by adding the following language as a new part:

§ 4-31-__01. This part shall be known and may be cited as the "Tennessee Transportation State Infrastructure Fund Act".

§ 4-31-__02. As used in this part, the term:

(1) "Department of transportation" means the Tennessee department of transportation and its successors;

(2) "Eligible costs" mean, as applied to a qualified project to be financed with federal funds, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines. As applied to all other qualified projects, such costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right-of-way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities, and other costs necessary for the qualified project. Eligible costs shall also include project monitoring costs incurred by the department of transportation, as provided in § 4-31-__05(d);

(3) "Eligible project" means a transportation infrastructure project, including streets, highways, bridges, tunnels, and any related roadway facilities; intelligent transportation systems; air transport and airport facilities; railways and rail facilities; port facilities; mass transit systems or transit capital projects; parking facilities; and pedestrian or bicycle facilities which provide public benefits by enhancing mobility or safety, promoting economic development, or increasing

the quality of life and general welfare of the public. There may be included as part of any such project all improvements, including equipment, necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation;

(4) "Financing agreement" means any agreement entered into between the authority and a qualified borrower pertaining to a loan entered into under the provisions of this part;

(5) "Fund" means the Tennessee transportation state infrastructure fund;

(6) "Government unit" means a county, incorporated town or city, metropolitan government, state agency, or instrumentality, authority, or agency of government created by any one (1) or more of the foregoing or by an act of the general assembly, including combinations of two (2) or more of these entities, acting jointly to construct, own, or operate a qualified project, or any other state authority, board, commission, agency, or department which may construct, own, or operate a qualified project;

(7) "Loan" means an obligation subject to repayment which is provided by the fund to a qualified borrower for all or a part of the eligible costs of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of the eligible costs of a qualified project;

(8) "Project revenues" or "revenues" mean all rates, rents, fees, assessments, charges, and other receipts derived or to be derived by a qualified borrower from a qualified project or otherwise made available (including, but not limited to, tax revenues), and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part or from any other

revenue producing facility under the ownership or control of the qualified borrower including, without limitation, proceeds of grants, gifts, appropriations, investment earnings, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other source as may be provided by the qualified borrower;

(9) "Qualified borrower" means any governmental unit authorized to construct, operate, or own a qualified project;

(10) "Qualified project" means an eligible project which has been recommended by the department of transportation to receive a loan from the fund to defray an eligible cost; and

(11) "Security" means that which is determined by the authority to be acceptable to secure a loan to a qualified borrower under this part and includes, but is not limited to, project revenues, ad valorem taxes, state-shared taxes, letters of credit and bond insurance.

§ 4-31-__03.

(a) The department of finance and administration shall establish the Tennessee transportation state infrastructure fund, in the state treasury, under the control of the authority.

(b) For necessary and convenient administration of the fund, the authority shall establish accounts and subaccounts as necessary to meet any applicable federal law requirements or as necessary or desirable in order to implement the provisions of this part.

(c) All federal funds shall be invested as required by applicable federal law, and all other funds shall be invested pursuant to state law.

(d) All interest and earnings of the fund shall remain a part of the fund.

(e) No part of the fund shall revert to the general fund on any June 30, but shall remain a part of the fund available for expenditure in accordance with the provisions of this part.

§ 4-31-__04.

(a) The state treasurer shall transfer the balance from the existing fund for the Tennessee State Infrastructure Bank, administered by the department of transportation, on the effective date of this act to the fund established in § 4-31-__03.

(b) The following sources may be used to capitalize the fund and for the authority to carry out its purposes:

(1) Appropriations by the general assembly;

(2) Federal funds apportioned and available to the state, as approved by the department of transportation;

(3) Contributions, donations, grants, and deposits from the federal government, government units, private entities, and any other source as may become available to the fund; and

(4) All payments of principal and interest on loans or pursuant to the financing agreements.

(c) In addition to the powers specified in part 1 of this chapter, the authority may request and receive funds from federal, state, or other government sources or from private entities. The authority may request the department of transportation, or other state agency or official, as appropriate, to act on its behalf or to assist in making application for such funds. All funds received from government or private sources shall be deposited in the fund to be used in accordance with this part.

(d) The authority shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the fund.

(e) The authority may enter into cooperative agreements with agencies of the federal government or other state agencies as necessary or desirable to implement the provisions of this part.

(a) The commissioner of the department of transportation shall review a proposed project and shall determine if it is an eligible project and, if so, whether or not to recommend the project to the authority. Preference may be given to eligible projects which have financial support in addition to any loan that may be received from the fund.

(b) Upon recommendation by the department of transportation of a qualified project, the authority has the power and is authorized to make loans to a qualified borrower; provided, that the fund has sufficient money to make the loan to pay for all or part of the eligible costs of a qualified project. The term of the loan shall not exceed the useful life of the project, as determined by the authority in consultation with the department of transportation. The authority shall require the qualified borrower to enter into a financing agreement in connection with its loan. The authority, in consultation with the department of transportation, shall determine the form and content of loan applications and financing agreements, including the term and rate or rates of interest on a financing agreement and security required. The authority shall determine the interest rate for a loan under this part in a manner consistent with interest rates established for loans under title 68, chapter 221, part 10. The terms and conditions of a loan made with federal funds shall comply with applicable federal requirements.

(c) Loans shall be made only to qualified borrowers that:

(1) In the opinion of the authority demonstrate financial capability to assure sufficient revenues to operate and maintain the eligible project for its useful life and to repay the loan;

(2) Pledge the security as required by the authority for repayment of the loan;

(3) Provide such assurances as are reasonably requested by the authority and the department of transportation; and

(4) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the project's financial records in accordance with generally accepted governmental auditing standards and with minimum standards prescribed by the comptroller of the treasury, and to file such audit with the comptroller. In the event of the failure or refusal of a qualified borrower to have the audit prepared, the comptroller may appoint an accountant or direct the department of audit to prepare the audit at the expense of the borrower.

(d) The department of transportation shall review and approve, and submit to the authority for reimbursement, such eligible costs as may be incurred by a qualified borrower for a qualified project. For this purpose, the department of transportation shall have authority to inspect the work, examine project records, and employ consultants as it deems appropriate to assist in carrying out such functions. To cover the costs of performing such functions, the department of transportation may charge such costs to the qualified project as an eligible cost and receive reimbursement therefor from the authority.

(e) The authority may assess a loan fee to cover the costs of administration of the program. Such fee may be apportioned between the authority and the department of transportation.

§ 4-31-__06.

(a) This part is in addition and supplemental to any other law providing for the financing of eligible projects of qualified borrowers and shall not be deemed to amend or repeal any other law.

(b) Qualified borrowers may enter into financing agreements under the provisions of this part, notwithstanding and without regard to any limit on indebtedness provided by law. No requirements or restraints applicable to borrowing by qualified borrowers contained in any other law shall be applicable to

financing agreements or to the proceedings for approval of the financing agreements entered into under this part. Qualified borrowers entering into financing agreements may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the authority as may be agreed to by the authority and any qualified borrower for the carrying out of the purposes contemplated by this part.

(c) In order to provide adequate security as may be required by the authority for a loan under this part, a qualified borrower is authorized to:

(1) Receive, apply, pledge, assign, and grant security interests in project revenues, and any revenues from any other revenue producing facilities from which the qualified borrower derives project revenues to secure its obligations as provided in this part;

(2) Pledge its state-shared taxes, as defined in § 4-31-102, if any;

(3) Pledge the full faith and credit and unlimited taxing power, if any, of the qualified borrower as to all taxable property of the qualified borrower to the punctual payment of the loan; and

(4) Pledge any other security determined by the authority to be acceptable to secure a loan under this part.

(d)

(1) Any pledge made by the qualified borrower pursuant to this part shall be valid and binding from the time when the pledge is made, the moneys or property so pledged and thereafter received by the qualified borrower shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the qualified borrower, irrespective of whether such parties have notice of the lien of such pledge.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(e) A qualified borrower shall ensure that all loans received from the authority pursuant to this part are used in accordance with applicable federal and state law. Such qualified borrower shall be liable for the repayment of such funds or damages caused in the event of any misuse of such loan received pursuant to this part.

§ 4-31-__07.

(a) If a qualified borrower fails to collect and remit in full all amounts due to the authority on the date such amounts are due under the terms of any note or other obligation of the qualified borrower, or if the qualified borrower fails to repay funds or pay damages in the event of misuse of loans received pursuant to this part, the authority shall notify the appropriate state officials who shall withhold all or a portion of the funds of the state and all funds administered by the state and its agencies, boards, and instrumentalities allotted or appropriated to the borrower, including, but not limited to, state-shared taxes and apply an amount necessary to the payment of the amount due.

(b) Nothing contained in this section mandates the withholding of funds allocated to a qualified borrower which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of a court binding on the state.

§ 4-31-__08.

(a) Following the close of each state fiscal year, the authority shall submit an annual report of its activities for the preceding year to the governor, the lieutenant governor, and the speaker of the house of representatives and make such report available to the general assembly. The authority also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program.

(b) The comptroller of the treasury shall make an annual audit of the fund as part of the comptroller's annual audit of the authority and of the department of transportation pursuant to § 9-3-211.

§ 4-31-__09. The authority, in consultation with the department of transportation, is authorized to adopt policies and procedures to effectuate the purposes of this act.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.